

1 STATE OF MONTANA
2
3 BOARD OF PERSONNEL APPEALS
4
5 UNFAIR LABOR PRACTICE CHARGES

6 IN THE VARIOUS MATTERS INVOLVING)
7 BOARD OF TRUSTEES SCHOOL DISTRICT)
8 NO. 1, and BILLINGS HIGH SCHOOL)
9 DISTRICT, BILLINGS, MONTANA)
10 and)
11 BILLINGS EDUCATION ASSOCIATION, et al)

ULP-11-1975

ORDER

12 On September 26, 1975 at 8:30 o'clock in Billings, Montana a hearing was
13 held to determine whether the above parties had committed certain unfair labor
14 practice charges against each other. Each of the parties was present or represented
15 by counsel, testimony taken, exhibits were entered and the Board of Personnel
16 Appeals now being fully advised in the premises makes the following:

FINDINGS OF FACT

17 We will take the charge filed by the Billings Education Association, hereinafter
18 BEA first. On August 22 the BEA charged the Board of Trustees of School District
19 #1 hereinafter, Board, with an unfair labor practice in that on August 21, 1975
20 BEA requested further negotiations with the School Board and that the School Board
21 refused to meet with the BEA.

22 Prior to the time of this charge the parties had engaged in thirteen face to
23 face negotiating sessions between January 22, 1975 and August 22, 1975, the date
24 of the charge, with the last face to face session occurring on June 6, 1975. In
25 addition, the Board of Personnel Appeals of the State of Montana, hereinafter BPA,
26 conducted mediation sessions on July 30 and 31, and August 19, 20 and 21, 1975.

27 Taking the evidence as a whole, we find that the course of negotiation entered
28 into between the two parties was certainly less than model and perhaps left much
29 to be desired. However, it is obvious that particularly in the early part of the
30 negotiations, some progress had been reached. It is further apparent, taking the
31 record as a whole, that as the date of August 22 was approached, the negotiations
32 had slowed. The BPA mediator acting on behalf of the BPA initiated the fact finding

process as provided by law. On August 21, 1975 the BEA sent the Board a letter, BSA Exhibit 8. The Board responded with a letter, BSA Exhibit 9. In essence, the BEA demanded to meet the next day, August 23, 1975 and the Board responded that they would be willing to negotiate but only after receiving a writing evidencing some change in position by the School Board. From the above findings of fact we draw the following:

CONCLUSIONS OF THE

Taking BPA Exhibits 8 and 9 in the context of the history of bargaining shown in this dispute and in light of the attempts to redraft which had apparently not been fruitful it is the opinion of the Board of Personnel Appeals that the charge activity does not constitute an unfair labor practice. While the Board does maintain a strong policy of requiring parties to make every reasonable and good faith effort to arrive at a comprised, negotiated settlement it will not require parties to engage in negotiations which could not, by any reasonable standard, prove fruitful at that time. While, perhaps, under other circumstances the activity complained of by the Board might constitute an unfair labor practice, the Board of Personnel Appeals must decide each case on its own issues and in light of its own bargaining history, and in this instance cannot say that the action of the School Board was unreasonable or unwarranted.

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21 The charge filed by NCA against the Board dated August 23, 1975 and docketed
22 August 25, 1975 is hereby dismissed.

24 We shall secondly review, one at a time, each of the six counts filed by the
25 Board against the BEA in a charge dated August 28, 1974.

COMIT II

FINDINGS OF FACT

We find that the Board is fundamentally correct in its factual allegation that as a percentage matter the PEA had moved only very little on economic matters between April 16, 1978 and August 25, 1978. We would find that the allegations of the Board with regard to the facts involved are fundamentally correct. From this we drew the following:

CONCLUSIONS OF LAW

Notwithstanding the fact the BSA had moved very little on the economic offer, we find no basis for an unfair labor practice charge. As a matter of law, we cannot say that the BSA was compelled to make a movement in this area.

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We dismiss Count I of Board's complaint.

COUNT III.

FINDINGS OF FACT

In the exceedingly hazy and nebulous area of School Board financing, and based upon the testimony in the record as we find it, we cannot as a matter of fact conclude that the BPA's proposal would have required deficit financing, and feel the BPA need treat the matter no further. Therefore, we make the following:

CONCLUSIONS OF THE STUDY

Because the Board did not demonstrate as a matter of fact the allegation complained of in Count II., it must fail without having reached any question of law on the matter.

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16 Count II. of Board's complaint is dismissed.

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PINTINGS OF FACT

The BPA find that both parties to this negotiation are to one degree or another guilty of some lack of candor in dealing with the public. The Board would recommend, as inferred in the section of this document dealing with the BCA's complaint, that this negotiation certainly not be used as a model for further negotiations. The Board makes the following:

CONCLUSIONS OF LAW

27 We do not find sufficient evidence to prove the allegations of this Charge.
28 We therefore, do not reach the question of whether such conduct would constitute
29 an unfair labor practice.

ORDER

31 It is therefore ordered Count III. Board's complaint be dismissed.

EIGHT IV.

FINDINGS OF FACT

In this Count, the Board contends it is an unfair labor practice for the
SEA to have taken a strike authorization vote on August 35, 1975.

As a finding of fact the Board finds that the BEA did on August 25, 1975 ask for and receive strike authorization. Therefore we draw the following:

CONCLUSION OF LAR

The matter of a strike authorization vote is a matter of internal union policy and will not ordinarily be interfered with by BPA. Strike authorization votes are common in the private sector and are part of the activity contemplated by and protected by the right "to engage in other concerted activity for the purpose of collective bargaining" pursuant to P.C.M., 1967, 55-1601.

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Count IV. The Board's complaint against BIA is dismissed.

COURT-Y

FINDINGS OF FACT

Count V is basically repetitive of Count IV. Internal union strategy as to a future course of action is not within the purview of those things to be reviewed by the Board under these circumstances.

Open

Count V is dismissed.

COUNT VI.

The Board in its first Game allows that:

"b. The defendants ... have violated section 1605(2)(S) by persistently demanding that the complainant bargain those areas of management prerogatives which have been expressly reserved to the complainants by Sections 1605(2), 1605(5) and 1617 of the Montana Public Employees Bargaining Law, by Montana Statutes and by the Montana Constitution."

Section 59-1603(2), R.C.M., 1947, reads as follows:

"(2) Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as but not limited to:

- 29 (a) direct employees;
30 (b) hire, promote, transfer, assign, and retain employees;
31 (c) relieve employees from duties because of lack of work or funds or
under conditions where continuation of such work be inefficient and non-
productive;

1 (d) maintain the efficiency of government operations;
2 (e) determine the methods, means, job classifications, and personnel by
3 which government operations are to be conducted;
4 (f) take whatever actions may be necessary to carry out the missions of
5 the agency in situations of emergency;
6 (g) establish the methods and processes by which work is performed."

7 Section 59-1605(3), R.C.M. 1947, reads as follows:

8 "(3) This act does not limit the authority of the legislature, any
9 political subdivision or the governing body, relative to appropriations
10 for salary and wages, hours, fringe benefits, and other conditions of
11 employment. (Sec. 59-1605(1) to (3), as amended by Ch. 30, L. 1975,
12 effective March 7, 1975, and by Ch. 97, L. 1975, effective July 1, 1975)."

13 Section 59-1617, R.C.M. 1947, reads as follows:

14 "59-1617. NEGOTIABLE ITEMS. Nothing in this chapter shall require or
15 allow boards of trustees of school districts to bargain collectively
16 upon any matter other than matters specified in Sec. 59-1605(3). (As
17 added by Ch. 117, L. 1975, effective July 1, 1975)."

18 In its brief, the Board argues that the BEA "bargained to impasse a number
19 of non-mandatory bargaining issues," and sets forth a list of 14 of what it
20 claims to be non-mandatory bargaining issues.

21 Clearly, the Montana state legislature, in its 1975 amendments to the
22 Montana Public Employees Collective Bargaining Act, intended Section 59-1617,
23 R.C.M. 1947, to narrow to some extent the issues to be bargained between a
24 school board and a teacher association. However, issues negotiated between
25 employers and employees are apt not to be clearly within either the definition
26 of "other conditions of employment" or the definition of "management prerogative".
27 Instead, the issues typically fall within the "gray" area somewhere in between.

28 In the present case, we find a lack of sufficient evidence to conclude
29 that the BEA insisted on bargaining the 14 issues enumerated to impasse, or
30 even to conclude that any of the 14 issues are so clearly outside the scope
31 of "other conditions of employment" as to be non-bargainable under Section
32 59-1617. The record here, however, does not reveal such issues being "bargained
33 to impasse".

34 ORDER

35 Count VI is dismissed.

36 DATED this 17th day of April, 1976.

37 BOARD OF PERSONNEL APPEALS

38 By 
39 Brent Cranley
40 Acting Chairman.